



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 15, 2023

IN THE MATTER OF:

Appeal Board No. 627422

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board No. 627419, the claimant appeals from the decision of the Administrative Law Judge filed December 29, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective October 11, 2021 through October 17, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification.

In Appeal Board No. 627420, the claimant appeals from the decision of the Administrative Law Judge filed December 29, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective November 1, 2021 through November 7, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification.

In Appeal Board No. 627421, the claimant appeals from the decision of the Administrative Law Judge filed December 29, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective September 13, 2021 through September 19, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification.

In Appeal Board No. 627422, the claimant appeals from the decision of the Administrative Law Judge filed December 29, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective September 20, 2021 through October 3, 2021, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for benefits on March 24, 2021. She did not receive a Claimant Information Handbook. She subsequently certified for weekly benefits using her phone to certify online. The claimant did not certify for the weeks ending September 19, September 26, and October 3, 2021 because she lost her phone. The claimant did not ask to use anyone else's phone or other device to certify for those weeks.

The claimant certified for benefits for the week ending October 10, 2021. She attempted to certify for the week ending October 17, but the Department of Labor's system did not give her the option to certify. The claimant certified for the weeks ending October 24 and October 31. When the claimant attempted to certify for the week ending November 7, 2021, the claimant found that her claim was on hold. Again, the Department of Labor's system did not give her the option to certify. The claimant tried to call the Department of Labor to request assistance claiming benefits, but was unable to reach a Department staff member. The claimant ultimately spoke with a Department of Labor staff member regarding her missed certifications for all of the weeks at issue on December 23, 2021.

OPINION: The credible evidence establishes that the claimant used her phone to certify for benefits online each week until she lost her phone. Instead of trying to borrow someone else's phone or other device, the claimant did not certify for the weeks ending September 19, September 26, and October 3, 2021. As the claimant made no effort to use a different phone or device to certify for benefits, we do not find good cause to excuse the claimant's failure to certify for the period from September 13 through September 19, 2021 and register for the period from September 20 through October 3, 2021. Accordingly, we conclude that the claimant is ineligible for benefits with respect to these periods.

The credible evidence further establishes that the claimant attempted to claim benefits online for the weeks ending October 17 and November 7, 2021, but the

Department of Labor's online system did not offer her the option to certify. The claimant subsequently tried to call the Department of Labor, but she was unable to reach a Department staff member. We are not persuaded by the Commissioner of Labor's contention at the hearing that there was no block on the claimant's claim, as this contention is not substantiated by any document or evidence and, in any event, does not discredit the claimant's testimony that the Department of Labor's system did not offer her the option to certify. Also unpersuasive is the contention that the claimant could have certified by using the Department of Labor's automated telephone certification system, as the claimant credibly testified that she did not learn of this system's existence until May 2022. The documentation that the Commissioner of Labor presented at the hearing to refute this testimony was not authenticated. Therefore, the claimant's testimony is given greater weight in this regard. We further note, however, that these documents corroborate the claimant's testimony that she tried to call the Department of Labor after being unable to certify online. As the claimant was unable to certify online and unable to reach the Department of Labor by phone, the claimant was prevented from certifying through no fault of her own. Accordingly, we further conclude that the claimant has shown good cause to excuse her failure to certify for the weeks ending October 17 and November 7, 2021, and the claimant is allowed benefits for these weeks.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from, are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 627419 and 627420, the initial determinations, holding the claimant ineligible to receive benefits, effective October 11, 2021 through October 17, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective November 1, 2021 through November 7, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification, are overruled.

In Appeal Board Nos. 627421 and 627422, the initial determinations, holding the claimant ineligible to receive benefits, effective September 13, 2021 through September 19, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective September 20, 2021 through October 3, 2021, on the basis that the claimant did not comply

with registration requirements, are sustained.

JUNE F. O'NEILL, MEMBER